

H.R.868

Direct Support Professionals Fairness and Security Act of 2009 (Introduced in House)
HR 868 IH

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H. R. 868

To amend title XIX of the Social Security Act to provide funds to States to enable them to increase the wages paid to targeted direct support professionals in providing services to individuals with disabilities under the Medicaid Program.

IN THE HOUSE OF REPRESENTATIVES

February 4, 2009

Mrs. CAPPS (for herself and Mr. TERRY) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend title XIX of the Social Security Act to provide funds to States to enable them to increase the wages paid to targeted direct support professionals in providing services to individuals with disabilities under the Medicaid Program.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; FINDINGS.

(a) Short Title- This Act may be cited as the 'Direct Support Professionals Fairness and Security Act of 2009'.

(b) Findings- Congress finds the following:

(1) Direct support professionals (including workers referred to as direct support workers, direct care workers, personal assistants, personal attendants, paraprofessionals) are the primary providers of long term care services for millions of individuals who have physical or mental disabilities. Direct support professionals provide assistance with activities of daily living, instrumental activities of daily living, assistance with rehabilitation, habilitation, training needs and other tasks. All provide essential supports that help keep individuals with disabilities connected to their communities.

(2) These workers who provide intimate supports are predominately female and many are the sole breadwinners of their families. Although working and paying taxes, many women in these jobs remain impoverished and are eligible for many of the same Federal and State public assistance programs upon which the very individuals with disabilities to whom they provide

supports must depend.

(3) Throughout the nation, there is a critical shortage of direct support professionals. Vacancy and turn over rates are high. In many parts of the country, individuals with disabilities are unable to access the services they need, thereby jeopardizing their health and quality of life, placing even greater burdens on their family members and informal caregivers and creating long waiting lists for community placement.

(4) The crisis that the nation faces today will only get worse. Over the next 30 years, there will be a rapid rise of the population over 65 years of age. At the same time, advances in medical science and drug therapy are increasing the number of people, of all ages, living with severe disabilities. Thus, while demand for direct support professional services is increasing, the pool of younger, entry level workers is shrinking. By 2010, more than 780,000 additional workers must be found to fill long-term direct support staff positions.

(5) To stabilize and increase the number of direct support professionals in the work force, the wages and benefits of direct support professionals must be improved and made equitable among long term support options.

(6) Medicaid is the single-largest payor of long-term supports and services for people with disabilities. Enhanced Federal Medicaid matching funds should be available to assist States committed to addressing wage differentials among direct support professionals by increasing the wages of direct support professionals and supporting and improving the stability of the direct support professional workforce.

SEC. 2. MEDICAID AMENDMENT.

(a) Authorizing Establishment of Direct Support Professional Wage Enhancement Plans- Title XIX of the Social Security Act is amended by adding at the end the following new section:

`DIRECT SUPPORT PROFESSIONAL WAGE ENHANCEMENT PLAN

`Sec. 1942. (a) State Option- As a condition for the receipt of increased funding described in subsection (f), a State is required to provide for the implementation of a direct support professional wage enhancement plan under this section.

`(b) Direct Support Professional Wage Enhancement Plan-

`(1) IN GENERAL- For purposes of this section, the term `direct support professional wage enhancement plan' means a plan of a State that the Secretary determines meets the following requirements:

`(A) DEADLINE FOR SUBMISSION- The plan is submitted to the Secretary not later than 120 days after the date the Secretary provides notice to States under paragraph (3).

`(B) CONTENTS-

`(i) EQUALIZATION OF HOURLY WAGE RATES- The plan must describe how the State intends to use the funds made available under this section to increase the hourly wage rate of targeted direct support professionals so that by the end of the 5-year implementation period (as defined in subsection (g)(4)) such rate is equal to the average hourly wage rate of reference direct support professionals.

`(ii) ADDITIONAL PROVISIONS- The plan must include the additional information described in subsection (c).

`(C) IMPLEMENTATION- The plan must be developed and implemented in accordance with subsection (d).

`(D) ANNUAL REPORTS- The State must provide for annual assessments and reports in

accordance with subsection (e).

`(2) MODIFICATION OF PLAN- Nothing in this section shall be construed as preventing a State from time to time and with the approval of the Secretary from modifying a direct support professional wage enhancement plan so long as such plan, as modified, continues to meet the requirements of paragraph (1).

`(3) NOTICE- Not later than 90 days after the date of the enactment of this section, the Secretary shall provide notice to States regarding the provisions of this section, including the availability of enhanced funding to implement direct support professional wage enhancement plans.

`(c) Contents of Plan- A direct support professional wage enhancement plan shall include, consistent with the other requirements of this section, the following:

`(1) A description of how the State intends to use funds provided under this section to meet the requirement of subsection (b)(1).

`(2) A description of the prevailing hourly wage rates for targeted direct support professionals before the implementation of such plan and any hourly wage rate differentials between targeted direct support professionals and reference direct support professionals.

`(3) The impact of wage differentials and labor market conditions on the recruitment and retention of targeted direct support professionals, including current or projected labor shortages.

`(4) The identification of a specific, five-year performance goal to increase the hourly wage rate of targeted direct support professionals so as to eliminate any wage rate differential between targeted and reference direct support professionals and the methodology to be used by the State to achieve its goal.

`(5) The annual performance goals and targets that the State will monitor to track progress toward achieving its five-year performance goal.

`(6) Current efforts to increase and stabilize the State's direct support professional labor force and how the plan shall be coordinated with such efforts.

`(7) Methods for assuring that funds provided under this section shall be spent in accordance with such plan, and shall not be used to supplant existing funds for wages and benefits or to reduce the State's expenditures below the amount that the State would have paid had the plan not been in effect.

`(8) A description of the stakeholders and collaborative process used consistent with subsection (d) to develop the plan and the means by which such collaboration shall continue during the implementation of the plan.

`(9) Assurances satisfactory to the Secretary that upon the expiration of the 5-year implementation period, the State shall provide funding necessary to maintain the wage rates attained under the plan for targeted direct support professionals at the five-year performance goal increased annually thereafter by a percentage that is not less than the annual percent increase in the employment cost index (as published quarterly by the Bureau of Labor Statistics).

`(d) Development and Implementation of Plan- A direct support professional wage enhancement plan shall be developed and implemented in collaboration with--

`(1) targeted individuals with disabilities and family representatives;

`(2) targeted direct support professionals;

`(3) agencies or provider organizations that serve targeted individuals with disabilities and employ targeted direct support professionals; and

`(4) individuals and organizations representing the interests of those described in paragraphs

(1) through (3).

`(e) Annual Assessment and Report-

`(1) IN GENERAL- A State shall--

`(A) perform an assessment of the operation of the direct care support professional wage enhancement plan in the State in each fiscal year; and

`(B) report to the Secretary by January 1 following the end of the fiscal year, on the results of such assessment.

`(2) CONTENTS- Each such assessment shall include the following:

`(A) An assessment of the effectiveness of the plan in increasing the wages of targeted direct support professionals and reducing or eliminating the wage gap with reference direct support professionals.

`(B) An assessment of the State's progress in meeting its annual performance goals under the plan.

`(C) An assessment of the effectiveness of the State's collaboration with stakeholders on plan development and implementation issues.

`(D) A review and assessment of State activities to coordinate the plan with other activities in the State to improve and stabilize the direct support professional workforce.

`(E) Recommendations for improving the plan.

`(F) Such other information as the Secretary may specify.

`(f) Increase in Payment to Implement Plan-

`(1) IN GENERAL- Subject to paragraph (2), for each calendar quarter during the 5-year implementation period in which a direct support professional wage enhancement plan is in effect under this section in a State, the amount of payment for medical assistance under section 1903(a)(1) shall be increased by the wage enhancement incentive percentage (as defined in paragraph (3)(G)) multiplied by the portion of total funds expended during the quarter for the provision of direct support services to targeted individuals that are attributable to the wages of targeted direct support professionals.

`(2) LIMITATION-

`(A) IN GENERAL- Payments made under paragraph (1) shall be used only to increase the wages of targeted direct support professionals.

`(B) TREATMENT OF EMPLOYEE BENEFITS AND SALARY RELATED BENEFITS- For purposes of subparagraph (A), payments for costs of employee benefits and other salary related benefits (including mandatory employment taxes and benefits) shall be treated as payments to increase the wages of targeted direct support professionals so long as payments attributable to such non-wage benefits do not exceed 20 percent of the total amounts that increase the wages of targeted direct support professionals.

`(3) DEFINITIONS- For purposes of this subsection:

`(A) ANNUAL RATE DIFFERENTIAL PERCENTAGE- The term 'annual rate differential percentage' means, with respect to a State for a year in which the direct support professional wage enhancement plan is in effect, the percent of the direct support professional wage rate differential (as defined in subparagraph (E)) to be paid under plan for the year.

`(B) AVERAGE REFERENCE DIRECT SUPPORT PROFESSIONAL HOURLY WAGE RATE- The term 'average reference direct support professional hourly wage rate' means, for a year under a direct support professional wage enhancement plan, the average direct support professional hourly wage rate (as defined in subparagraph (D)), including any projected increase, paid in the year to reference direct support professionals who are employed by the

State or, if there are no such employees, to reference direct support professionals who are employed by local governments in the State, or, when necessary to meet the purpose of the plan, any other reference wage rate defined by the State and as approved by the Secretary.

`(C) BASE-YEAR AVERAGE TARGETED DIRECT SUPPORT PROFESSIONAL HOURLY WAGE RATE- The term `average targeted direct support professional hourly wage rate' means, for a State, the average direct support professional hourly wage rate (as defined in subparagraph (D)) paid to targeted direct support professionals under the State plan in the 12-month-period immediately preceding the 5-year implementation period.

`(D) DIRECT SUPPORT PROFESSIONAL HOURLY WAGE RATE- The term `direct support professional hourly wage rate' means--

`(i) the rate of hourly wage paid to a direct support professional; plus

`(ii) mandatory employment taxes and benefits (as defined in subparagraph (F)) paid (as computed and applied on an hourly basis) with respect to such employment.

`(E) DIRECT SUPPORT PROFESSIONAL WAGE RATE DIFFERENTIAL- The term `direct support professional wage rate differential' means, for a State for a year, the amount by which--

`(i) the average reference direct support professional hourly wage rate (as defined in subparagraph (B)) for the State and year, exceeds

`(ii) the base-year average targeted direct support professional hourly wage rate (as defined in subparagraph (C)) for the State.

`(F) MANDATORY EMPLOYMENT TAXES AND BENEFITS- The term `mandatory employment taxes and benefits' means taxes under section 3111 of the Internal Revenue Code of 1986 (relating to the employer share of FICA taxes) and the employer's share of unemployment compensation and worker's compensation payments.

`(G) WAGE ENHANCEMENT INCENTIVE PERCENTAGE- The term `wage enhancement incentive percentage' means--

`(i) the product of (I) the total direct support professional wage rate differential (as defined in subparagraph (E), and (II) annual rate differential percentage (as defined in subparagraph (A)); divided by

`(ii) the average reference direct support professional hourly wage rate (as defined in subparagraph (B)).

`(g) Inspector General Audit- The Secretary, through the Inspector General of the Department of Health and Human Services, shall audit a sample from among the States in order to assess the effectiveness of progress made in reducing or eliminating the wage gap between targeted and reference direct support professionals through funds under this section.

`(h) GAO Study-

`(1) STUDY- The Comptroller General of the United States shall conduct a study concerning the wage equalization and recruitment and retention of direct support professionals who are providing services and supports to individuals with disabilities.

`(2) REPORTS- The Comptroller General shall submit to Congress reports, in the third and fifth years in which this section is being implemented, on progress made by States, and the impact of payments under this section, on providing wage equalization and in improving recruitment and retention of direct support professionals.

`(i) Definitions- For purposes of this section:

`(1) DIRECT SUPPORT PROFESSIONAL- The term `direct support professional' means an individual who, whether in a supervisory or non-supervisory capacity, provides services and supports, as needed, to an individual with a disability to assist in acquiring, maintaining or

enhancing skills necessary to perform activities of daily living or instrumental activities of daily living and health-related functions through hands-on assistance, supervision, or cueing. Such term includes, among others, individuals who may be classified as nurses aides, home health aides, home care aides, personal care aides and personal assistants, in-home support workers, homemakers, behavioral specialists, habilitation specialist, mental health rehabilitation technicians, independent living skills specialists, crisis program workers, qualified mental health or mental retardation professionals, and educational technicians.

`(2) DIRECT SUPPORT PROFESSIONAL WAGE ENHANCEMENT PLAN- The term `direct support professional wage enhancement plan' is defined in subsection (b)(1).

`(3) DIRECT SUPPORT SERVICES- The term `direct support services' means a range of services and supports, provided by one or more persons, designed to provide support and health-related services to an individual with a disability to enable them to perform, acquire, maintain or enhance skills necessary to perform activities of daily living (ADL), instrumental activities of daily living (IADL) and health-related functions. Such term includes personal care services, consumer-directed personal assistance services, rehabilitation services, habilitation services, and respite care.

`(4) INDIVIDUAL WITH A DISABILITY- The term `individual with a disability' means an individual who meets (or is regarded as meeting) the criteria for being disabled under the supplemental security income program under title XVI. Such term includes an individual who, regardless of age, is eligible for and receiving medical assistance under this title for any benefits described in paragraph (i)(8).

`(5) 5-year IMPLEMENTATION PERIOD- The term `5-year implementation period' means, with respect to a State and a direct support professional wage enhancement plan under this section, the period of 20 calendar quarters beginning with the first full calendar quarter in which such plan is implemented in the State under this section. Each of the five 4-calendar-quarter periods within such period shall be treated as a year for purposes of this section.

`(6) REFERENCE DIRECT SUPPORT PROFESSIONAL- The term `reference direct support professional' means a direct support professional who--

`(A) is employed by a State or local government entity; and

`(B) provides direct support services to targeted individuals with disabilities under this title.

`(7) TARGETED DIRECT SUPPORT PROFESSIONAL- The term `targeted direct support professional' means a direct support professional who--

`(A) is not employed by a State or local government entity; and

`(B) provides direct support services to targeted individuals with disabilities under this title.

`(8) TARGETED INDIVIDUAL WITH A DISABILITY- The term `targeted individual with a disability' means an individual with a disability who is eligible for and is receiving medical assistance under this title for personal care services under section 1905(a)(23), for rehabilitative services under section 1905(a)(13), for home health care services under section 1905(a)(7), for intermediate care facility services for the mentally retarded under section 1905(a)(15), for home and community-based services under a State plan option under section 1915(j), for self-directed personal assistance services under a State plan amendment option under section 1915(i), or for home and community-based services under a waiver approved under section 1915(c) or section 1115.'

(b) Conforming Amendment- Section 1903(a)(1) of such Act (42 U.S.C. 1396b(a)(1)) is amended by inserting `and section 1942(f)' after `1923(f)'.

(c) Authorization of Planning Grants- The Secretary of Health and Human Services is

authorized to award State planning grants in an amount not to exceed, in the aggregate, \$3,000,000, in order to assist States in establishing direct support professional wage enhancement plans under section 1942 of the Social Security Act, as added by subsection (a).

